



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/605,242

09/17/2003

Kurt Newman

1094US1.014033.013

3303

24239 7590 09/28/2010

MOORE & VAN ALLEN PLLC

P.O. BOX 13706

Research Triangle Park, NC 27709

EXAMINER

BRANDENBURG, WILLIAM A

ART UNIT

PAPER NUMBER

3622

MAIL DATE

DELIVERY MODE

09/28/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/605,242	<b>Applicant(s)</b> NEWMAN, KURT	
	<b>Examiner</b> WILLIAM A. BRANDENBURG	<b>Art Unit</b> 3622	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/11/2010 has been entered.

***Response to Amendment***

2. The following is a Non-Final Office Action in response to communications received on 08/11/2010 for Request for Continued Examination (RCE). No claims have been cancelled. Claim 17 has been amended. No claims have been added. Therefore, claims 1-48 are pending and addressed below.

***Claim Rejections - 35 USC § 112***

3. The amendment filed on 08/11/2010, has corrected the 35 U.S.C. 112 deficiencies directed towards antecedent basis

Art Unit: 3622

issues of claim 17 identified in the Office Action dated 04/13/2010. Thus, the Examiner hereby withdraws the 35 U.S.C. 112 second paragraph rejections of claim 17 that was raised in the Office Action dated 04/13/2010. However, the amendment filed on 08/11/2010 has NOT corrected the 35 U.S.C. 112 1<sup>st</sup> paragraph deficiencies of claims 1 and 43, nor has it corrected the 35 U.S.C. 112 2<sup>nd</sup> paragraph deficiencies of claims 1 and 43. See below for further detail.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1 and 43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites the following: "...wherein the at least one treatment comprises a plurality of different treatments..." and "...wherein the at least one channel comprises a plurality of different channels..." These recited features contain subject matter that is not described or supported anywhere in the Applicant's specification. The Applicant has failed to even address this particular first paragraph rejection in the reply filed on 08/11/2010. As such, the Examiner will maintain this first paragraph rejection of claims 1 and 43 at this time. Aside from these claim elements not being described in the specification, the Examiner notes that these same claim elements are also subject to a 112 2nd paragraph rejection for being indefinite as detailed below.

Similar reasoning can be used for claim 43 and is rejected accordingly.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3622

5. Claims 1 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the following: "defining at least one treatment, wherein the at least one treatment comprises a plurality of different treatments..." and "selecting at least one channel, wherein the at least one channel comprises a plurality of different channels..." (*emphasis added*) Claim 1 further recites "applying the plurality of different treatments to the plurality of different selected channels..."

As per the first set of recitations, it is unclear to the Examiner how one treatment can comprise of a plurality of different treatments and one channel can comprise of a plurality of different channels. The Examiner notes there is either only one treatment and one channel, or there are multiple treatments and multiple channels; there cannot be both.

The Applicant argues in the reply filed on 08/11/2010 that the claim recites "at least one treatment", which means that the treatments can be a plurality of plurality treatments. The Applicant further argues that "Since the claim says that the "at least one treatment comprises a plurality of different

Art Unit: 3622

treatments", it submitted these phrases of claims 1, 17 and 42 are definite." The Examiner appreciates that the recitation of "at least one treatment" implies that there can be a plurality of treatments. This fact is not in dispute. The indefiniteness rejection disputed the fact that a plurality of different treatments can be comprised in only "one treatment"; "one treatment" is simply that, a single treatment. Similar reasoning has been used for the "channel" recitations. The Examiner understands what the Applicant intended to mean with the claim language, however, this claim language must properly and thoroughly disclose the intention. Therefore, the Examiner is not persuaded by the Applicant's argument and respectfully recommends the Applicant amend the claim language to overcome this indefiniteness issue.

As per the second recitation, the preceding limitations have only required one to define "one treatment" and select "one channel". As such, it is unclear to the Examiner how the third limitation is applying the plurality of different treatments to the plurality of different selected channels.

As such, claim 1 is rejected for being indefinite. See MPEP 2173.

For the purposes of examination, the Examiner will interpret that there can be a plurality of treatments and a

Art Unit: 3622

plurality of channels and the plurality of treatments can be applied in various ways to various channels, however, all that is required of claim 1 is to define one treatment and select one channel. As such, the "applying" step must be interpreted as applying the one treatment to the selected channel.

Similar reasoning can be used for claim 43 and is rejected accordingly.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. **Claims 1-23 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Louviere et al. (US 6,934,748 B1) (hereinafter Louviere).**



Art Unit: 3622

7. As per claim 1 (and similarly the computer-readable medium (col. 3, line 34 - col. 4, line 22) of claim 43), Louviere discloses a method to apply different treatments, comprising: defining at least one treatment, wherein the at least one treatment comprises a plurality of different treatments, each of the plurality of different treatments being different from each other (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner notes the provided recitations disclose multiple treatments, however, as noted in the 112 2<sup>nd</sup> rejection, one treatment cannot comprise a plurality of different treatments. Furthermore, all that is required by the claim language is to define at least one treatment. As such, the limitation has been satisfied in accordance with the 112 2<sup>nd</sup> rejection.);

selecting at least one channel, wherein each of the at least channel comprises a specific medium of communication (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner understands that as these recitations disclose experimenting with multiple different treatments to gauge the reaction of users via a designed experiment, a channel (i.e. webpage with the specific medium of

Art Unit: 3622

communication being the Internet) has indeed been selected. As such, this limitation has been satisfied.),

applying the plurality of different treatments to the plurality of different selected channels such that each different selected channel has a different treatment applied thereto and associated therewith so as to evaluate the impact that each different treatment has to each different, selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner notes the provided recitations disclose multiple treatments being applied to the selected channel (i.e. webpage) to gauge the reaction of users via a designed experiment, however, as noted in the 112 2<sup>nd</sup> rejection, one channel cannot comprise a plurality of different channels. Furthermore, all that is required by the claim language is to define at least one treatment and apply said treatment to the one selected channel. As such, the limitation has been satisfied in accordance with the 112 2<sup>nd</sup> rejection.).

Louviere does not explicitly disclose

wherein the at least one channel comprises a plurality of different channels, each of the plurality of different

Art Unit: 3622

channels being different from each other, at least one medium of communication comprising a non-webpage medium.

However, Louviere does teach other communication networks and mediums in addition to Internet (i.e. webpage) mediums such as telephone call centers, automated teller machine (ATM) networks, instant messaging systems, interactive televisions services, etc. (col. 6, lines 36-51). Furthermore, Louviere teaches that although particular embodiments of the present invention have been shown and described, it will be obvious to those skilled in the art that changes or modifications may be made without departing from the present invention in its broader aspects (col. 27, lines 58-62).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Louviere to include a plurality of different channels comprising non-webpage mediums of communication. The rationale for this inclusion is that there are a limited number of predictable communication mediums one could experiment with by applying different treatments to gauge user reaction, among which includes non-webpage mediums. Moreover, common sense dictates that more channels used in the experimentation would yield even more

Art Unit: 3622

results that could be used to further optimize and target the content in question. The Examiner notes the teachings of Louviere clearly teach that other channels could very well be selected instead of webpages and used in a similar manner, thereby satisfying the plurality of channels limitation.

8. As per claim 2, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses wherein defining the at least one treatment comprises

defining one of a content treatment and an auxiliary content treatment (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

9. As per claim 3, Louviere discloses the method of claim 2 (as rejected above). Louviere further discloses wherein applying the auxiliary content treatment comprises

applying a predetermined treatment in response to a conditional logic statement (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

Art Unit: 3622

10. As per claim 4, Louviere discloses the method of claim 2 (as rejected above). Louviere further discloses further comprising

applying the at least one content treatment or the auxiliary content treatment according to a conditional logic statement in response to the treatment being flagged as a rule set (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

11. As per claim 5 (and similarly the computer-readable medium (col. 3, line 34 - col. 4, line 22) of claim 44), Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses further comprising

applying the at least one treatment to a control point associated with each selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

12. As per claim 6 (and similarly the computer-readable medium (col. 3, line 34 - col. 4, line 22) of claim 45), Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses wherein applying the at least one treatment to the at least one selected channel comprises

Art Unit: 3622

at least one of applying at least one chosen treatment to a web site, applying at least one chosen treatment to e-mail, applying at least one chosen treatment to an automatic teller (ATM) screen, applying at least one chosen treatment to an on-hold telephone message, applying at least one chosen treatment to direct mailing, applying at least one chosen treatment to outbound telemarketing and applying at least one chosen treatment to marketing a product or service (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

13. As per claim 7 (and similarly the computer-readable medium (col. 3, line 34 - col. 4, line 22) of claim 46), Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses further comprising

selecting at least one test cell including at least one control point and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

14. As per claim 8, Louviere discloses the method of claim 7 (as rejected above). Louviere further discloses further comprising

Art Unit: 3622

defining a plurality of test groups each comprising a plurality of test cells (col. 17, lines 1-38, see also col. 23, line 50 - col. 26, line 65).

15. As per claim 9 (and similarly the computer-readable medium (col. 3, line 34 - col. 4, line 22) of claim 47), Louviere discloses the method of claim 8 (as rejected above). Louviere further discloses further comprising

defining at least one matrix, each matrix including selected test groups of the plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

16. As per claim 10, Louviere discloses the method of claim 9 (as rejected above). Louviere further discloses further comprising

defining a transition to a new matrix (col. 21, lines 20-64).

17. As per claim 11 (and similarly the computer-readable medium (col. 3, line 34 - col. 4, line 22) of claim 48), Louviere discloses the method of claim 9 (as rejected above). Louviere

Art Unit: 3622

further discloses wherein defining the transition to a new matrix comprises:

selecting a percentage of each test group in a previous matrix to be associated with each test group in the new matrix (col. 21, lines 20-64); and

selecting a mapping path for each test group in the previous matrix (col. 17, lines 1 - col. 18, line 43, see also col. 21, lines 20-64).

18. As per claim 12, Louviere discloses the method of claim 10 (as rejected above).

Louviere does not explicitly disclose further comprising validating the new matrix.

However, Louviere does teach a prediction generator that specifies particular segments for investigation and optimization of content delivery. Users are search and clustered together according to similarities and differences in their characteristics and optimal content. These clustered groups function as segments for implementing predictions (col. 21, lines 20-64, see also col. 13, lines 18-59). In addition, Louviere teaches a scripting/scheduling engine that can



Art Unit: 3622

automatically control all functionality of the system. This scripting/scheduling creates script to direct various elements of the system to perform a particular action or set of actions. Each script may include basic error handling procedures (col. 14, line 46 - col. 15, line 15, see also col. 22, line 55 - col. 23, line 48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Louviere to include validating. The rationale for this inclusion is that there are a limited number of predictable techniques one could perform to prevent errors, one of which includes validating. The Examiner notes that based on the teachings of Louviere with regards to the automated error handling of system operations, it would have been obvious to include the obvious variation of validating of the instant invention.

19. As per claim 13, Louviere discloses the method of claim 12 (as rejected above). Louviere further discloses further comprising

updating output files for each channel according to the new matrix (col. 21, lines 20-64).

Art Unit: 3622

20. As per claim 14, Louviere discloses the method of claim 13 (as rejected above). Louviere further discloses further comprising

altering the channels in response to the new treatments associated with the new matrix (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 21, lines 20-64, see also col. 23, line 50 - col. 26, line 65).

21. As per claim 15, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses wherein evaluating results comprises:

accessing historical data related to treatments applied to different customers and segments of customers stored in a data source (col. 13, lines 20-59, see also col. 17, line 65 - col. 18, line 14, see also col. 26, line 48 - col. 27, line 7);

evaluating a margin of success or failure of each treatment applied to different segments and customers via different channels (col. 13, lines 20-59, see also col. 26, line 48 - col. 27, line 7); and

adjusting practices or operations based on results of the evaluation (col. 13, lines 20-59, see also col. 20, lines 10-28, see also col. 26, line 48 - col. 27, line 47).

22. As per claim 16, Louviere discloses the method of claim 1 (as rejected above). Louviere further discloses further comprising

testing an effect of the application of the at least one treatment to the at least one selected channel (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

23. As per claim 17, Louviere discloses a method to apply different treatments, comprising:

accessing historical data related to treatments from a data source (col. 13, lines 20-59, see also col. 17, line 65 - col. 18, line 14, see also col. 26, line 48 - col. 27, line 7);

evaluating a margin of success or failure of each treatments applied to different segments via different channels so as to evaluate the impact that each different treatment has to each different channel (col. 13, lines 20-59, see also col. 26, line 48 - col. 27, line 7), wherein the treatments comprise a plurality of different treatments, each of the plurality of different treatments being different from each other (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 -

Art Unit: 3622

col. 26, line 65) (The Examiner notes the provided recitations disclose multiple treatments.), and wherein each of the plurality of different channels comprises a specific medium of communication (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner understands that as these recitations disclose experimenting multiple different treatments to gauge the reaction of users via a designed experiment, a channel (i.e. webpage with the specific medium of communication being the Internet) has indeed been selected. As such, this limitations has been satisfied.); and

adjusting practices or operations based on results of the evaluation (col. 13, lines 20-59, see also col. 20, lines 10-28, see also col. 26, line 48 - col. 27, line 47).

Louviere does not explicitly disclose

wherein the different channels comprise a plurality of different channels, each of the plurality of different channels being different from each other.

However, Louviere does teach other communication networks and mediums in addition to Internet (i.e. webpage) mediums such as telephone call centers, automated teller machine (ATM)

Art Unit: 3622

networks, instant messaging systems, interactive televisions services, etc. (col. 6, lines 36-51). Furthermore, Louviere teaches that although particular embodiments of the present invention have been shown and described, it will be obvious to those skilled in the art that changes or modifications may be made without departing from the present invention in its broader aspects (col. 27, lines 58-62).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Louviere to include a plurality of different channels. The rationale for this inclusion is that there are a limited number of predictable communication mediums one could experiment with by applying different treatments to gauge user reaction, among which includes webpages, non-webpage mediums, etc. Moreover, common sense dictates that more channels used in the experimentation would yield even more results that could be used to further optimize and target the content in question. The Examiner notes the teachings of Louviere clearly teach that other channels could very well be selected instead of webpages and used in a similar manner, thereby satisfying the plurality of channels limitation.

Art Unit: 3622

24. As per claim 18, Louviere discloses the method of claim 17 (as rejected above). Louviere further discloses further comprising

applying at least one treatment to at least one selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

25. As per claim 19, Louviere discloses the method of claim 18 (as rejected above). Louviere further discloses wherein

applying the at least one treatment to the at least one selected channel comprises at least one of applying at least one chosen treatment to a web site, applying at least one chosen treatment to e-mail, applying at least one chosen treatment to an automatic teller (ATM) screen, applying at least one chosen treatment to a telephone answering menu system and applying at least one chosen treatment to direct mailing (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

26. As per claim 20, Louviere discloses the method of claim 18 (as rejected above). Louviere further discloses wherein

applying the at least one treatment comprises

Art Unit: 3622

applying the at least one treatment to a control point associated with each selected channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

27. As per claim 21, Louviere discloses the method of claim 17 (as rejected above). Louviere further discloses further comprising

selecting at least one test cell including at least one control point and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

28. As per claim 22, Louviere discloses the method of claim 20 (as rejected above). Louviere further discloses further comprising

defining a plurality of test groups each comprising a plurality of test cells (col. 17, lines 1-38, see also col. 23, line 50 - col. 26, line 65).

29. As per claim 23, Louviere discloses the method of claim 22 (as rejected above). Louviere further discloses further comprising

Art Unit: 3622

defining at least one matrix, each matrix including selected test groups of the plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**30. Claims 24-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Louviere et al. (US 6,934,748 B1) (hereinafter Louviere).**

31. As per claim 24, Louviere discloses a system to apply different treatments, comprising:  
a server (col. 4, lines 47-52); and



Art Unit: 3622

a test control system operating on the server to apply each treatment selected from a plurality of treatments to a chosen channel (Fig. 2, "12", see also col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65),

wherein each of the plurality of treatments are different from each other (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner notes the provided recitations disclose multiple treatments that are all different from each other. As such, this limitation is satisfied.),

wherein the chosen channel comprises a specific medium of communication (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner understands that as these recitations disclose experimenting multiple different treatments to gauge the reaction of users via a designed experiment, a channel (i.e. webpage with the specific medium of communication being the Internet) has indeed been selected. As such, this limitations has been satisfied.), and

wherein the plurality of treatments are applied to the chosen channel so as to evaluate the impact that each

Art Unit: 3622

different treatment has on the chosen channel (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65) (The Examiner understands that as these recitations disclose experimenting multiple different treatments to gauge the reaction of users via a designed experiment, a channel (i.e. webpage with the specific medium of communication being the Internet) has indeed been selected. As such, this limitations has been satisfied.).

32. As per claim 25, Louviere discloses the system of claim 24 (as rejected above). Louviere further discloses further comprising

a data source to store the plurality of treatments (Fig. 2, "24", see also col. 7, lines 42-67).

33. As per claim 26, Louviere discloses the system of claim 24 (as rejected above). Louviere further discloses further comprising

a data source to store historical data related to the selected treatments applied to each chosen channel (Fig. 2, "36", see also col. 13, lines 18-59).

Art Unit: 3622

34. As per claim 27, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses wherein

each treatment comprises one of a content treatment and an auxiliary content treatment (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

35. As per claim 28, Louviere discloses the system of claim 27

(as rejected above). Louviere further discloses wherein

the auxiliary content treatment comprises a predetermined treatment applicable to the chosen channel in response to a conditional logic statement (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

36. As per claim 29, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses wherein

a treatment flagged as a rule set is applicable to the chosen channel in response to a conditional statement associated with the rule set (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

37. As per claim 30, Louviere discloses the system of claim 24

(as rejected above). Louviere further discloses wherein

Art Unit: 3622

the chosen channel comprises at least one of a web site, e-mail, automatic teller (ATM), on-hold message system, electronic kiosk, outbound telemarketing system direct mailing, marketing a product or service (col. 5, line 9 - col. 6, line 51, see also col. 23, line 50 - col. 26, line 65).

38. As per claim 31, Louviere discloses the system of claim 24 (as rejected above). Louviere further discloses further comprising

at least one test cell defining at least one control point associated with each chosen channel and at least one treatment associated with each control point (col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

39. As per claim 32, Louviere discloses the system of claim 31 (as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a treatment graphical user interface (GUI) to a user via a browser to create and edit selected treatments and to select control points associated with each treatment (Fig. 2, "38", see also col. 14, lines 9-36).

Art Unit: 3622

40. As per claim 33, Louviere discloses the system of claim 31 (as rejected above). Louviere further discloses wherein the test control system comprises a data structure to present a control point GUI to a user via a browser to create and edit control points (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

41. As per claim 34, Louviere discloses the system of claim 31 (as rejected above). Louviere further discloses wherein the test control system comprises a data structure to present a test cell GUI to a user via a browser to create test cells and select treatments to be associated with each test cell (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

42. As per claim 35, Louviere discloses the system of claim 31 (as rejected above). Louviere further discloses further comprising at least one test group including selected ones of a plurality of test cells (col. 17, lines 1-38, see also col. 23, line 50 - col. 26, line 65).

43. As per claim 36, Louviere discloses the system of claim 32

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test groups GUI to a user via a browser to define and edit each test group (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

44. As per claim 37, Louviere discloses the system of claim 35

(as rejected above). Louviere further discloses further comprising

at least one test matrix including selected ones of a plurality of test groups (col. 9, line 1 - col. 10, line 29, see also col. 16, line 20 - col. 17, line 59).

45. As per claim 38, Louviere discloses the system of claim 37

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test matrix GUI to a user via a browser to create and edit the test matrices (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

46. As per claim 39, Louviere discloses the system of claim 38

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test groups selection GUI to the user via a browser to select test groups to be associated with each test matrix (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 23, line 57 - col. 24, line 5).

47. As per claim 40, Louviere discloses the system of claim 38

(as rejected above). Louviere further discloses wherein

the test control system comprises a data structure to present a test matrix transition GUI to a user via a browser to select percentages of each test group of a prior test matrix to be transferred to each test group of a new test matrix and to select a mapping path for each test group and a channel to be associated with each test group (Fig. 2, "38", see also col. 14, lines 9-36, see also col. 15, line 20 - col. 18, line 25, see also col. 21, lines 20-65, see also col. 23, line 57 - col. 24, line 5).

Art Unit: 3622

48. As per claim 41, Louviere discloses the system of claim 24 (as rejected above). Louviere further discloses further comprising

a control point to apply each treatment to the chosen ones of the plurality of channels (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

49. As per claim 42, Louviere discloses the system of claim 24 (as rejected above). Louviere further discloses further comprising

a data structure to generate a report of all customers changing segments (col. 14, lines 1-23, see also col. 20, lines 16-59, see also col. 22, lines 10-30).

### ***Response to Arguments***

50. Applicant's arguments filed 08/11/2010 have been fully considered but they are not persuasive.

51. In the remarks, the Applicant argues the following with respect to claims 1, 17 and 43:

*(a) Louviere does not disclose "applying the plurality of different treatments to the plurality of different selected*



Art Unit: 3622

*channels such that each different selected channel has a different treatment applied thereto and associated therewith so as to evaluate the impact that each different treatment has to each different, selected channel."* Louviere only deals with varying content only to webpages. Louviere clearly does not disclose applying different treatments to different channels;

*(b) Louviere does not disclose "selecting at least one channel..." There is no selection process at all in Louviere; and*

*(c) The Office correctly acknowledges that Louviere does not teach or disclose "wherein the at least one treatment comprises a plurality of different treatments, each of the plurality of different treatments being different from each other." The Examiner appears to use Official Notice by stating that one skilled in the art would know to modify Louviere to include different channels comprising non-webpage mediums.*

In response to these arguments, the Examiner respectfully disagrees.

52. Argument (a) is directed towards subject matter (i.e. applying the plurality of different treatments to the plurality of different selected channels) that is subject to a 112 2<sup>nd</sup> paragraph rejection fully detailed above. The Examiner

Art Unit: 3622

has addressed the limitations in question in accordance with the 112 2<sup>nd</sup> paragraph rejection. Moreover, the Applicant's argument that Louviere only deals with varying content only on webpages and not applying different treatments to different channels has been fully addressed via the obviousness rejection detailed above. Based on the teachings and rationales provided in the obviousness rejection, it is clear that Louviere is not limited to merely the disclosed embodiment of webpages. In fact, Louviere explicitly teaches other data networks and digital systems that provide or support an interactive channel utilized by users are considered (e.g. ATM). Therefore, the obviousness rejection applied is indeed thorough and proper. As such, the Examiner finds argument (a) not persuasive.

As per argument (b), the Examiner notes the following recitations: (col. 5, line 9 - col. 6, line 35, see also col. 15, line 20 - col. 18, line 14, see also col. 23, line 50 - col. 26, line 65).

The Examiner understands that as these recitations disclose that Louviere is experimenting with multiple different treatments to gauge the reaction of users via a designed experiment via a specific channel (i.e. webpage with the specific medium of communication being the Internet).

Art Unit: 3622

Therefore, based on this designed experiment and the fact Louviere teaches the consideration of other interactive channels (e.g. ATM as detailed in addressing argument (a)), at least one channel has indeed been selected. As such, this limitation has been satisfied. The Examiner finds argument (b) not persuasive.

As per argument (c), the Examiner notes that nowhere in the Office Action did it acknowledge that Louviere does not teach or disclose "wherein the at least one treatment..." Rather, the Examiner constructed an obviousness rejection to address the recitation directed towards "at least one channel comprises a plurality of different channels..." Therefore, this particular argument is both erroneous and not persuasive.

Furthermore, nowhere in the Office Action did the Examiner use the terms "Official Notice", nor was "Official Notice" implied by the rejection provided. Rather, the Examiner used an "obvious-to-try" rationale in accordance with *KSR* in conjunction with a "common sense" rationale. Moreover, the Examiner clearly did not use "Official Notice", as the rationale used in the obviousness rejection was based on the direct teachings of Louviere. Therefore, this particular argument is not persuasive.

Art Unit: 3622

53. In the remarks, the Applicant argues the following with respect to claims 12-14:

*(a) Claim 12 is directed to a specific, detailed feature of some embodiments of the invention of validating a new matrix. Louviere does not even suggest a matrix, much less validating a new matrix. This concept is not obvious to one of ordinary skilled in the art.*

In response to these arguments, the Examiner respectfully disagrees.

54. As per the Applicant's specification, a matrix or test matrix may refer to a collection of test groups that may be associated with a specific channel and segment. The test matrix may include a mixture of predictive test groups, fractional test groups or fractional factorial test groups. Each test group may be a specific experiment and test matrix may have multiple experiments that may be executed simultaneously ([0023]).

Based on this disclosure by the Applicant, the Examiner contends this is exactly what Louviere implements. As disclosed by Louviere, experiment engine functions to support the creation and execution of one or more experiments to test the behavior or reactions of users to particular content and

Art Unit: 3622

particular treatments. Experiments are dictated by rules and the experiments may include full factorial experiments and designed fractions of full factorial experiments (col. 9, line 1 - col. 10, line 29). Experiment manager object may generate the content treatments to be delivered for each experiment and determine the conditions for deliver (e.g. to whom and when). To accomplish this, experiment manager object may use any or all of the experiment engine functionality described herein (e.g. tables, search algorithms, etc.) (col. 16, line 57 - col. 18, line 25).

The Examiner understands these recitations to satisfy the concept of a matrix, which was appropriately addressed in claims 9 and 10. The Examiner notes that as per this particular argument directed towards claim 12, the Examiner applied an obviousness rejection in the previous Office Action simply to address the concept of "validating", not for the "matrix" concept.

Moreover, the Applicant appears to be making a conclusory statement, which is absent of fact, that the concept in question is not obvious to one of ordinary skilled in the art. Simply because the Applicant makes this statement in no way makes it true. Perhaps if the Applicant provided some factual basis on why this concept would not be obvious to one of

Art Unit: 3622

ordinary skill in the art, or that the disclosures and/or teachings of Louviere prohibit this concept from being implemented, then the Examiner might have been persuaded. However, absent these conditions, the Examiner is not persuaded by this particular argument.

### ***Conclusion***

55. Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM A. BRANDENBURG whose telephone number is (571)270-5488. The examiner can normally be reached on Monday-Thursday 6:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3622

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. A. B./  
Examiner, Art Unit 3622

/John Van Bramer/  
John Van Bramer  
Primary Examiner, Art Unit 3622